

S & S MECHANICAL CONTRACTORS

CONTRACT NO. V532C-448

VABCA-4921

VA MEDICAL CENTER
CANANDAIGUA, NEW YORK

Kirk Fitcher, Project Manager, Frank L. Ciminelli Construction Co., Inc., Buffalo, New York for the Appellant.

Stacey North Willis, Esq., Trial Attorney; **Charlma Jones, Esq.**, Deputy Assistant General Counsel; and **Phillipa L. Anderson, Esq.**, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER DISMISSING APPEAL

1. The Board, in its July 5, 1996 NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE, noted that, from the documents before it, the appeals appeared to be untimely. Correspondence received from the Appellant indicated that the Appellant, the prime contractor, received the Final Decision on March 29, 1996. The record also indicates that Appellant received the Notice of Appeal from the real party in interest, the subcontractor, on June 28, 1996, the 91st day after receipt of the final decision. In addition, the transmittal letter from the prime contractor to this Board is dated June 28, 1996. Finally, the Notice of Appeal was postmarked June 29, 1996, or ninety-two (92) days after receipt of the Final Decision. The *Contract Disputes Act* (CDA), 41 U.S.C. § 601 et seq., provides in § 606 that:

Within *ninety days* from the date of receipt of a contracting officer's final decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title [emphasis supplied]

The time limitation on the filing of an appeal, as a statutory waiver of sovereign immunity, must be strictly construed. Thus, the Board is without discretion to assume jurisdiction over an appeal not filed within ninety days. ***Cosmic Construction Co. v. United States***, 697 F.2d 1389 (Fed. Cir. 1982); ***Olympus Corporation***, VABCA No. 3550, 92-2 BCA ¶ 24,856; ***Surgical Appliance Industries, Inc.***, VABCA No. 3674, 93-1 BCA ¶ 25,364.

2. We granted the Appellant until July 29, 1996 to SHOW CAUSE why this appeal should not be dismissed for lack of jurisdiction, because the claim was not appealed to the Board in a timely manner as required by the CDA. As of this date, no reply has been received from the Appellant.

3. Given the facts before the Board and the failure of the Appellant to respond, we conclude that we are without jurisdiction to consider this matter. Accordingly, the appeal of S & S Mechanical Contractors, VABCA- 4921, is hereby dismissed pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: August 6, 1996

GUY H. MCMICHAEL III
Chief Administrative Judge
Panel Chairman

We concur:

RICHARD W. KREMPASKY
Administrative Judge

MORRIS PULLARA, JR.
Administrative Judge